

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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In the Matter of _____ )	
Implementation of Section 621(a)(1) of _____ )	
the Cable Communications Policy Act of 1984 _____ )	MB Docket No. 05-
311	
as amended by the Cable Television Consumer _____ )	
Protection and Competition Act of 1992 _____ )	

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**COMMENTS OF CITY OF POCATELLO**

These Comments are filed by City of Pocatello in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, the City of Pocatello believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

In our community a cable "franchise" is termed an ordinance. The Federal Cable Act refers to this as a "franchise" so we will use that term in these comments. Also, many communities have a cable ordinance which operates in conjunction with the franchise agreement, the terms of which are often negotiated with the cable company in conjunction with the franchise agreement. These documents collectively referred to as the "franchise" below.

**Cable Franchising in Our Community**

**Community Information**

The City of Pocatello has a population of 52,910. Our franchised cable provider is Cable One. Our community has negotiated cable franchises since 1954.

Our current franchise began on October 21, 1995 and expires on October 21, 2010. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the

franchise in which to request a renewal under the Federal Act. As a result, at this time we are not currently negotiating a franchise renewal with the incumbent provider.

Our franchise requires the cable operator to pay a franchise fee to the city in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have 1 channel devoted to public access; 1 channel devoted to educational access; and 1 channel devoted to government access.

Our franchise requires the cable company to support the government and public access channels by collecting a 30-cent fee per subscriber per month. The City also received an equipment grant to support access operations in the amount of \$65,000 at the beginning of the franchise in 1995. No additional monies have been received in support of access.

Our franchise requires the cable company to meet or exceed FCC requirements in providing the system capability to transmit an emergency alert signal from locations designated by the City to all subscribers.

Our franchise requires the cable operator to meet or exceed current FCC Customer Service standards. The City has a 30 day notification requirement of channel changes, changes in services, pricing, etc. The City does have customer complaint procedures in place which try to resolve concerns citizens might have with their cable service.

Our franchise requires that the cable operator make service available at standard installation rates for every potential consumer whose dwelling is one of a minimum of 11 dwelling units per  $\frac{1}{4}$  mile of linear cable, from the nearest existing cable plant; or whose dwelling is situated such that cable constructed from the nearest existing cable plant would pass an average of 44 homes per linear mile; and where connection to the potential consumer's dwelling from cable plant constructed as required under this franchise requires no more than a 150 foot drop cable.

Our current franchise contains no rebuild or upgrade requirements. However, our local cable system has been upgraded in the last 10 years in order to offer advance services. All residents who can subscribe to cable video services can also subscribe to cable modem service.

Our franchise contains a "level playing field" provision which requires any provider of cable like services to have provisions comparable to those contained in the franchise, in order that one operator not be granted an unfair competitive advantage over another.

Our franchise contains the following insurance and bonding requirements: The Grantee will provide a written guarantee in lieu of bond in the amount of ten thousand dollars (\$10,000). No additional bond or other surety is required regarding performance of the contract.

The cable franchise grants the cable operator access to the public rights-of-way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is not required to obtain a permit from the appropriate municipal office before it may access the public rights-of-way, except in the case the cable operator plans to excavate in the public streets, whereas the cable operator would need to get a \$25.00 permit to do so.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement: The Cable Company is required to provide the City with a quarterly and yearly report in order to make sure customer service standards are being met. In addition, the City has the option of requesting a technical audit or financial audit be performed. The City has not requested either of these audits be performed to date.

### **The Franchising Process**

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows:

The Cable Company shall comply with all federal and state laws and regulations, including regulations of any administrative agency thereof, adopted or established during the entire term of the franchise.

### **Competitive Cable Systems**

Our community has never been approached by a competitive cable provider to provide service. The City does have mechanisms in place to offer the same or a comparable franchise to a competitor upon request.

### **Conclusions**

The local cable franchising process functions well in the City of Pocatello. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights-of-way in a fair and evenhanded manner, that other users of the rights-of-way are not unduly inconvenienced, and that uses of the rights-of-way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The City of Pocatello therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

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